

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration	:
between	:
CITY OF PHILADELPHIA,	:
“City”	:
- and -	:
F.O.P, LODGE NO. 5,	:
“Union”	:
	X

APPEARANCES

For the City

CITY OF PHILADELPHIA LAW DEPARTMENT
Diane A. Loebell, Esq., Senior Attorney Labor & Employment

For the Union

JENNINGS SIGMOND, P.C.
Marc L. Gelman, Esq.

BEFORE: David J. Reilly, Esq., Arbitrator

BACKGROUND

The Department discharged Police Officer Joseph Griffin effective October 9, 2014. It did so based upon a charge of “Conduct Unbecoming,” stating a violation of Police Department Disciplinary Code Section 1-§026-10 (i.e., actions that constitute a felony or misdemeanor carrying potential sentence of more than one year). The charge stems from a domestic violence report made by Griffin’s spouse, C [REDACTED] G [REDACTED], on June 5, 2014.

The Union contends the City lacked just cause to impose this discipline. It asks that Griffin be reinstated to his former position with the Department and be made whole for all pay and benefits lost as a consequence of his discharge. It also requests that the City be directed to revise Griffin’s personnel records to expunge all reference to his discharge to the extent consistent with governing law.

The relevant facts of this case, including the areas of dispute, may be set forth succinctly:

At the time of his discharge, Griffin had been a member of the Department for over eight years. He has no record of prior discipline.

The circumstances leading to Griffin’s discharge arose from the events of June 4 and 5, 2014.

J [REDACTED] M [REDACTED], an Administrative Sergeant in the 15th District, testified that on the morning of June 5, 2014, Ms. G [REDACTED] came to the district office and reported that hours earlier, her husband, a police officer, had threatened and punched her. He recalled assigning Police Officer J [REDACTED] K [REDACTED], to take Ms. G [REDACTED]’s statement. He stated further

that he notified the Internal Affairs Division (“IAD”) of this matter because it involved a Department member.

K [REDACTED] recounted that in her statement, Ms. G [REDACTED] related that the incident began as a verbal dispute over whether she had lied about calling her mother and later became physical with G [REDACTED] punching her. According to K [REDACTED], Ms. G [REDACTED] reported suffering several injuries, including scratches on her face, bruised right eye, lump on her head and pain in her ribs. She described Ms. G [REDACTED]’s demeanor at this time as “teary, shaking and distraught.” (City Exhibit 1.)

After providing this statement, Ms. G [REDACTED] proceeded to IAD where she was interviewed by Sergeant Brent Conway.¹

In her signed statement of that interview, she explained that while G [REDACTED] had “beaten” her multiple times in the past, she was motivated to report him on this occasion because he had “threatened to kill me if I left him.” (City Exhibit 3.) She detailed that their argument began via text messages exchanged while she was at work on June 4, 2014, in which he threatened multiple times to beat her when she returned home. As a result, she related that after leaving work, she visited the 15th District where she was advised by a sergeant to obtain a Protection from Abuse Order (“PFA”) if she wanted to remove her child from the home shared with Griffin.

In this account, Ms. G [REDACTED] continued by reporting that she returned home after attempting unsuccessfully to obtain a PFA. She related that their argument resumed later that evening when Griffin discovered that she had contacted the 15th District. At this point, she said, “He started punching me in the ribs and on the head and choking me

¹ Conway stated that Lieutenant Richard Sysol was present during his June 5, 2014 interview of Ms. G [REDACTED].

stating he was going to kill me right now." According to Ms. G [REDACTED], he released her after she grabbed his neck, at which time she got her infant child who was crying. She recalled that while she was holding the child, Griffin punched her again in the face. Then, after briefly calming down and apologizing, he threatened that if she ever attempted to leave him, he would kill her. (City Exhibit 3.)

Conway recounted that as part of his investigation of this matter, he had photographs taken of Ms. G [REDACTED] depicting her injuries and obtained copies of the text messages she had exchanged with Griffin. (City Exhibits 2A-2L & 4.) According to Conway, he observed that Ms. G [REDACTED] had suffered facial injuries, including a bruised right eye, as well as scratches on her neck. He also noted that Ms. G [REDACTED] was visibly shaking.

He reported conducting a second interview of Ms. G [REDACTED] on June 16, 2014, after she had advised of her intent to withdraw her initial statement.²

The signed transcript of this second interview reflects that Ms. G [REDACTED] began by stating, "Everything that I said in my prior interview was a lie." (City Exhibit 3.) She maintained that she, and not Griffin was "the aggressor," explaining that she did not report that fact previously because she had feared being arrested. In recounting the June 5, 2014 incident, she related that the argument arose from her suspicion that Griffin was cheating on her. When he announced that he was leaving and began packing a bag, she detailed punching him in the chest and arms. According to her statement, Griffin initially responded by pushing her in the face to get away, and then knocked her on to the bed and held her there until she calmed down. (City Exhibit 3.)

² Conway stated that Sergeant Calvin White was present for his second interview of Ms. G [REDACTED]

Conway reported that during this second interview, Ms. G [REDACTED] also changed her account concerning the text messages. She now claimed that they had been exchanged with a friend who was mad at her. She explained changing this friend's contact name on her cellphone to "Hubby" so the messages would appear to have come from Griffin and could be used to get him in trouble. (City Exhibit 3.)

Conway averred that his investigation ultimately substantiated that Griffin had assaulted Ms. G [REDACTED] on June 5, 2014 as originally reported. (City Exhibit 6.) He also confirmed obtaining an arrest warrant that resulted in Griffin being charged with 2 felonies and four misdemeanors. (City Exhibit 7.)³

In her testimony, Ms. G [REDACTED] again related the details of her argument with Griffin, which began via text messaging while she was at work on June 4, 2014. According to Ms. G [REDACTED], the argument arose from stress she was then experiencing, as well as home-life issues, including childcare. She reported that after leaving work at approximately 5:30 p.m., she stopped home briefly and then went to the 15th District. Her purpose in going there, she stated, arose from Griffin precluding her from visiting her mother's home with their child. She recalled speaking with a female officer at the 15th District who advised that she would need to obtain a PFA. However, when she attempted to do so, a representative at the Criminal Justice Center advised that she lacked grounds to obtain a PFA.

Upon returning home, she related, her argument with Griffin continued. She recounted that the situation escalated when Griffin advised he was leaving and went to the bedroom to pack a bag. According to Ms. G [REDACTED], she "lost it" at this point and began

³ These charges included intimidation of a witness, endangering the welfare of a child, terroristic threats, simple assault, recklessly endangering another person and harassment. (City Exhibit 7.) The first two charged offenses are felonies and the other four are misdemeanors.

punching Griffin in the chest and shoulders multiple times while he attempted to block her blows. He subsequently knocked her onto the bed and held her there until she became calm. She reported scratching herself in an attempt to pull his hands off of her.

She stated that situation between her and Griffin remained calm until the following morning when he received a call from his supervisor, Sergeant B [REDACTED].

B [REDACTED], she recalled, inquired whether “everything was okay,” noting that he had been informed of her visit to the 15th District the prior evening. Griffin, she stated, became upset and threatened to leave because she had involved his job.

Addressing her visit to 15th District that morning with her mother and brother, she recalled informing an officer of her argument with Griffin, stating, “I hit a cop.”⁴ Moving on to her subsequent interview at IAD, she explained that her account of the incident changed due to being intimidated and placed in fear by Conway and the other officers present. She recalled Conway demanding to know whether Griffin had hit her and threatening to have her child removed. As a result, she began telling lies that Griffin had hit her.⁵

Feeling horrible for lying about Griffin, she reported subsequently seeking guidance from her brother, J [REDACTED] M [REDACTED].⁶ Heeding his advice “to tell the truth,” she contacted Conway and submitted to the second IAD interview on June 16, 2014, during which she recanted her June 5, 2014 statement and provided the account described

⁴ Ms. Griffin identified the brother accompanying her that morning as S [REDACTED] M [REDACTED].

⁵ She related that following this interview, she proceeded at Conway’s directive to the Criminal Justice Center, where she obtained a PFA against Griffin. According to Ms. G [REDACTED], at a June 11, 2014 court hearing, the PFA was rescinded at her request.

⁶ J [REDACTED] M [REDACTED], a police officer in a neighboring municipality, confirmed the substance of this conversation with Ms. G [REDACTED].

above.⁷ She acknowledged, however, not being completely truthful in this second account, as she falsely advised Conway that Griffin was not the source of the text messages produced at the June 5, 2014 interview. She claimed instead that they had been received from friend with whom she was having an argument. Explaining this false statement, she stated, “I thought it would make the situation better by saying the texts came from someone else.”

In his testimony, Griffin provided an account of the relevant events that paralleled Ms. G [REDACTED]’s.⁸ He, too, reported that Ms. G [REDACTED]’s June 5, 2014 physical attack was triggered by his stated intention to leave her. He recalled making that statement after discovering that Ms. G [REDACTED] had called the 15th District earlier that day.

Addressing the threats contained in the text messages, he denied having any intent to act on them. He explained that they were a “scare tactic” intended to change Ms. G [REDACTED]’s behavior. He also stated that the reference to prior incidents concerned verbal arguments and not physical altercations.

Turning to the related criminal charges, Griffin reported that the District Attorney subsequently withdrew the two felony charges. He stated that he entered a conditional guilty plea on the remaining four misdemeanor charges. He explained doing so on advice of counsel because it enabled him to enter a diversion program, the successful completion of which would allow him to withdraw his guilty plea and have the charges dismissed. According to Griffin, he has since completed the requirements of the diversion program

⁷ Ms. G [REDACTED] reviewed the signed transcript of her second interview and confirmed its accuracy. (City Exhibit 3.) She also related repeating this account when subsequently questioned by representatives from the District Attorney’s Office.

⁸ He described scratching Ms. G [REDACTED]’s face as he pushed her away in defending against her punches. He also stated that one of Ms. G [REDACTED]’s blows glanced off his shoulder and struck and cut his lip. He identified this injury in the photographs that were taken of him by the Department on June 5, 2014. (Union Exhibit 1.)

and expects to have his criminal record expunged at his next court hearing. (City Exhibit 9.)⁹

On the basis of Conway's investigation, the Department dismissed Griffin effective October 9, 2014, by a Commissioner's Direct Action charging him with a violating Department Disciplinary Code Section 1-§026-10 (actions that constitute a felony or misdemeanor carrying a potential sentence of more than one year). (City Exhibit 8.) Commissioner Richard Ross, who was a Deputy Commissioner as of October 9, 2014, averred that he concurred with the decision to dismiss Griffin.¹⁰ He explained that the City, as a matter of practice, dismisses any member of the Department found to have committed criminal offenses of this nature.¹¹

Griffin's discharge prompted the instant grievance. When the parties were unable to resolve the matter at the lower stages of the grievance procedure, the Union demanded arbitration. Pursuant to their contractual procedures, the parties selected me to hear and decide the case. (Joint Exhibit 1.)

I held a hearing in this case on March 14, 2016, at the offices of the American Arbitration Association in Philadelphia, PA. At the hearing, the parties each had full opportunity to present evidence and argument in support of their respective positions. They did so. Upon the conclusion of the hearing, I declared the record closed as of that date.

⁹ On cross-examination, Griffin confirmed that the diversion program required him to take responsibility for his actions. He explained doing so by acknowledging his anger issues had contributed to his argument with Ms. G████.

¹⁰ Charles Ramsey, who was the Department's Commissioner as of October 9, 2014, is no longer with the Department and was unavailable to testify in this matter.

¹¹ Commissioner Ross's testimony was received by stipulation of the parties.

DISCUSSION AND FINDINGS

The Issue:

The parties have stipulated that the issues to be decided are as follows:

1. Did the City have just cause to discharge the grievant, Police Officer Joseph Griffin, effective October 9, 2014?
2. If not, what shall be the remedy?

Positions of the Parties

The City contends that its discharge of Griffin was for just cause. It maintains that the evidence conclusively demonstrates that he is guilty of the charged offense.

It acknowledges that the case turns on a matter of credibility. It reasons in this regard that it is Ms. G [REDACTED]'s initial statement of the events of June 4 and 5 2014 that should be credited, and not the alternate account she provided nearly two weeks later. Her initial statement, it argues, is much more closely corroborated by the surrounding evidence. Further, it notes that the credibility of her alternate account is undercut by her admission that it included a lie concerning the source of the text messages. Finally, it highlights Ms. G [REDACTED]'s motive to fabricate and adhere to her alternate account in that it serves her self-interest in protecting Griffin's job and his continued ability to support her and their child.

In sum, it concludes that the evidence establishes that on June 5, 2014, Griffin committed a domestic assault against Ms. G [REDACTED]. For this reason, it had just cause to discharge him. Accordingly, it asks that Griffin's discharge be sustained and the Union's grievance be denied.

The Union, on the other hand, maintains that the City lacked just cause to discharge Griffin. It submits that the City has failed to satisfy its burden of demonstrating that he is guilty of the charged offense.

It, too, represents that the outcome of this case rests on a determination of credibility. It maintains that on review, Ms. G [REDACTED]'s second statement to IAD is far more credible than her initial one provided on June 5, 2014. Her latter account, it stresses, was confirmed by both her and Griffin's testimony, which reflected a consistent recollection of the critical events.

Addressing Griffin's text messages, it concedes that the content was terrible and inexcusable. It stresses, however, that they are of no consequence here. They do not, it concludes, bear on the ultimate issue, which is whether Griffin assaulted his wife. Instead, as Griffin explained, his text messages were intended only as a scare tactic to shake Ms. G [REDACTED] out of her behavior.

It notes that the only objective evidence presented was the photographs taken of Griffin and his wife on June 5, 2014. The photographs of Ms. G [REDACTED], it submits, are consistent with both of her accounts. However, it asserts that the photographs of Griffin can be squared only with Ms. G [REDACTED]'s second account. Only her flailing and punching Griffin, it reasons, can explain the cut lip that is depicted in the photograph of him.

Finally, it cites J [REDACTED] M [REDACTED]'s testimony as corroboration that Ms. G [REDACTED] was motivated by an attack of conscience to recant her initial statement in which she falsely accused Griffin of assaulting her.

In sum, it concludes that the only persons that know the truth of what occurred on June 4 and 5, 2014 are Griffin and his wife. Their testimony, it submits, establishes that

Griffin did not assault her. The City had the burden of refuting their account and failed to do so.

Accordingly, for these reasons, the Union asserts that its grievance should be granted and the requested relief awarded.

Opinion

There can be no dispute that the City's Police Department has a right and a duty to ensure that its officers adhere to certain standards of conduct both on and off duty. This expectation, no doubt, includes the requirement that officers adhere to the laws that they are sworn to uphold and enforce. Officers who breach this obligation by engaging in conduct that constitutes a felony or a serious misdemeanor can and should expect that serious discipline will result.

The City, of course, carries the burden of proof here. It must demonstrate by a preponderance of the credible evidence that Griffin committed the charged offense. It must also establish that the level of discipline imposed is appropriate. The Union, on the other hand, has no corresponding burden. It need not disprove the charges against Griffin. Indeed, he is entitled to a presumption of innocence.

On review, the record convinces me that the City has satisfied its burden. My reasons for this conclusion follow.

As both parties have acknowledged, the determination of whether Griffin committed the charged offense (i.e., assaulted Ms. G [REDACTED]) involves a matter of credibility. After a careful review of the entire record, I am compelled to credit Ms. G [REDACTED]'s June 5, 2014 statement in which she reported that Griffin had assaulted her hours earlier. The explanation that she offered for recanting that statement lacks the ring

of truth. Further, her alternative account in which she claims to have been the aggressor suffers from various inconsistencies.

Upon examination, I am unpersuaded by Ms. G [REDACTED]'s claim that her original statement was a series of lies caused by the undue pressure and threats to which Conway subjected her during the IAD interview. I found Conway's testimony denying any such tactics to be clear, consistent and entirely credible. Moreover, her contrary claim rests on a premise that is unsupported by the record: namely, that her intent in going to the 15th District with her mother and brother on the morning of June 5, 2014 was to confess her assault on Griffin. Although she claimed to have done so before proceeding to IAD, neither of the officers that she spoke with at the 15th District could confirm such a statement. In fact, just the opposite, both M [REDACTED] and K [REDACTED] recalled her stating that Griffin had punched her. Their recollection in this regard is fully consistent with the statement that K [REDACTED] recorded in the Domestic Violence Report. (City Exhibit 1.)

Further, I take note that neither Ms. G [REDACTED]'s mother, D [REDACTED] M [REDACTED], nor her brother, S [REDACTED] M [REDACTED], who accompanied her to the 15th District that morning, made any mention of such an intended confession in the statements that they gave to IAD. Instead, they both related that Ms. G [REDACTED] had advised them that Griffin had punched and choked her. (City Exhibit 6.)¹²

In sum, I am satisfied that Ms. G [REDACTED]'s original statement to Conway was entirely voluntary and represents a truthful account of the physical assault to which she was subjected by Griffin on June 5, 2014.

¹² I recognize that these statements by Ms. G [REDACTED]'s mother and brother constitute hearsay, and neither individual appeared as a witness to give confirming testimony. However, in considering these statements, I do so not for their truth, but solely for the fact that they were made, a matter that is not in dispute.

In contrast, her June 16th 2014 statement, which she affirmed in her testimony here, rings hollow. As an initial matter, by her own admission, it was not entirely truthful. Although claiming that her June 16, 2014 statement stemmed from an attack of conscience that compelled her to set the record straight, she concedes lying in stating that a friend, and not Griffin, was the source of the threatening text messages. Further, the explanation that she now offers for doing so (i.e., “to make the situation better”) is more consistent with an attempt to exonerate Griffin than to confess to her own guilt.

I also note that in attempting to assume blame for her argument with Griffin and the related physical assault, she ascribed inconsistent motives to her conduct. In her June 16, 2014 statement, she attributed the argument to her accusing Griffin of cheating on her. (City Exhibit 3.) While in her testimony here, she stated the argument stemmed from stress and home life issues. Further, neither claim is supported by the text messages, which reflect instead that Griffin instigated the argument. (City Exhibit 4.)

Moreover, the text messages are entirely at odds with her claim of being triggered into a physical attack by his threatening to leave her. While he made that same threat in several of his messages, I note that she never responded with even a trace of anger. Instead, in each instance, she either attempted to dissuade by stating her feelings for him or expressed resignation.

Finally, the text messages further undercut her June 16, 2014 statement in that they plainly reflect that Griffin, and not she, harbored the intent to commit physical violence. The alternative interpretation that Griffin ascribed to these text messages is simply not credible. His claim that he threatened to “beat” Ms. G [REDACTED] merely as a scare tactic intended to change her behavior is highly suspect. Indeed, I find that his repeated

threats to deliver a “beating,” despite her apologies and promises to change, rebut this assertion.¹³ Further, there remain the references in his text messages to prior beatings of Ms. G [REDACTED] for which he could offer no plausible explanation. His contention that those references concerned verbal arguments and not physical assaults not only conflicts with his chosen words, but also makes no sense. Indeed, if true, he would have had no reason to reference such prior incidents in seeking to enhance his threats of immediate physical harm to Ms. G [REDACTED].¹⁴

In sum, I satisfied that the weight of the credible evidence substantiates that Griffin assaulted his wife on June 5, 2014, as she averred in her June 5, 2014 statement. Further, in view of all the relevant circumstances, I am persuaded that discharge was the appropriate penalty here.

Accordingly, for all these reasons, the Union’s grievance is denied.

¹³ The following exchange is particularly telling in this regard:

Ms. G [REDACTED]: You won’t have to tell me anything again. I’ll change babe. Please don’t. I’ll do anything.

Griffin: Nope.

* * * * *

Ms. G [REDACTED]: I just want to work this out. We have to work this out. No beating; this is terrible. I’m sorry I upset you so much. I’m sorry; please babe.

Griffin: Nope.

Ms. G [REDACTED]: Why would you beat me? Please don’t.

Griffin: Why wouldn’t I? Answer that question from my point of view.

Ms. G [REDACTED]: When I come home I’m not going to be stubborn or stupid or make you mad. I’m gonna make you so happy.

Griffin: No.

Ms. G [REDACTED]: Can’t one of us just leave to avoid this.

Griffin: Nope. Now you’re getting it and then I’m leaving. So selfish.

(City Exhibit 4.)

¹⁴ It is plain from the following that his references to prior altercations with Ms. G [REDACTED] concern physical assaults and not verbal arguments: “I’m gonna beat the shit out of u tonight. . . . The other ones ain’t shit compare (sic.) to what you got coming tonight.” Moreover, later in the exchange of text messages, he becomes apologetic and expressly admits to hitting Ms. G [REDACTED] in the past when he states, “I swear on my grandmother who raised (sic.) I won’t hit u ever again.” (City Exhibit 4.)

AWARD

1. The City had just cause to discharge Joseph Griffin, effective October 9, 2014.
2. The grievance is denied.

April 11, 2016



David J. Reilly, Esq.
Arbitrator

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

I, DAVID J. REILLY, ESQ., do hereby affirm upon my oath as Arbitrator that I
am the individual described herein and who executed this instrument, which is my
Award.

April 11, 2016



David J. Reilly, Esq.
Arbitrator